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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDEL WAYANE BAUGHMAN, JR.,

Defendant and Appellant.

F071518

(Super. Ct. No. 1463111)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Stanislaus County. Scott T. Steffen, Judge.

Michael Satris, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Alice Su, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Poochigian, J. and Peña, J.

Appellant Randel Wayane Baughman, Jr., appeals from the denial of his petition for resentencing under Penal Code section 1170.18, seeking modification of the sentence imposed on his prior conviction for unlawfully driving or taking a vehicle (Veh. Code, § 10851).¹ Appellant contends that his conviction under section 10851 is eligible for resentencing under Proposition 47 and that the denial of his request violates principles of equal protection. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On or around October 30, 2013, appellant pled nolo contendere to unlawfully driving or taking a vehicle under section 10851 and admitted to an enhancement for a prior theft conviction. In exchange, two related charges were dismissed and appellant received a four-year sentence.

Appellant's arrest originated from a call to 911 placed by a citizen concerned about possible drunk driving. When police arrived to investigate the call, they found the suspect vehicle was reported as stolen. Appellant, who had been identified as the suspected drunk driver by a witness who saw him exit the vehicle with a gas can, was arrested in a nearby store and found in possession of gloves, a screwdriver, pliers, and pictures of the victim's family that had been in the car when it was stolen.

On or around December 1, 2014, appellant filed a petition for a writ of habeas corpus, seeking resentencing under Proposition 47. The writ was treated as a petition for resentencing. The People opposed the petition, both informally and formally, on the ground a conviction under section 10851 is not eligible for resentencing. Appellant was provided a public defender, who argued appellant was statutorily eligible. The trial court denied appellant's petition.

This appeal timely followed.

¹ All statutory references are to the Vehicle Code unless otherwise noted.

DISCUSSION

Appellant argues that a violation of section 10851 is a theft offense, subject to resentencing under Penal Code section 1170.18. Appellant further argues that treating a conviction for theft of an automobile under section 10851 as a felony while other similar property thefts are treated as misdemeanors under Penal Code section 490.2 would create constitutional difficulties by violating equal protection principles. We have previously addressed both issues in *People v. Saucedo* (2016) 3 Cal.App.5th 635 (*Saucedo*), review granted November 30, 2016, S237975.² In *Saucedo* we held that section 10851 is not affected by the changes enacted through Proposition 47 and that no equal protection violation arises from the different potential punishments for, or the failure to grant retroactive sentencing relief to, those convicted under section 10851. (*Saucedo, supra*, at pp. 644-650.) We see no reason to depart from those rulings here.

Related to these arguments, appellant also contends that a conviction under section 10851 must be eligible for resentencing because it is a lesser included offense to grand theft auto, which is eligible for resentencing when the value of the vehicle is less than \$950. We do not agree. As explained in *Saucedo*, a conviction under section 10851 does not require an explicit determination of intent to steal. (*Saucedo, supra*, 3 Cal.App.5th at pp. 643, 644-646.) Thus, evidence of theft is unnecessary to satisfy the elements needed for conviction. The fact that, in some limited circumstances, section 10851 can serve as a lesser included offense to theft of an automobile (whether grand or petty theft under Proposition 47), does not change the fact that the ultimate conviction is not necessarily for a theft offense. Because section 10851 is not by its nature a theft offense, its exclusion from Proposition 47 confirms there was no intent to modify the

² Effective July 1, 2016, California Rules of Court, rule 8.1115(e)(1) was amended to provide that a published opinion of a Court of Appeal has no binding or precedential effect once the matter is pending review in the Supreme Court and “may be cited for potentially persuasive value only.”

punishment scheme separately set forth for the crime of unlawfully driving or taking a vehicle.

DISPOSITION

The order is affirmed.